IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 512 of 1989

Dattu Lakhu Patil .. Appellant

V/s

Hambira V. Patil

since deceased byhis heirs

1. Sonabai Hambira Patil

and Ors. ... Respondents

Mr.V.S.Gokhale for B.P.Apte for Appellant

Shri V.B.Rajure for Respondent nos.1 to 5

CORAM:S.R.SATHE,J.

DATED:8th March 2006

**ORAL JUDGMENT** :-

1. Heard both the learned Advocates.

2. From perusal of the record it appears that at the time of admission, this court (Coram:S.M.Daud,J.) has passed the following order :

> "Appeal admitted. The substantial question of law being whether on the evidence adduced plaintiff-Appellant was entitled to the reliefs claimed?

3. The facts giving rise to the above mentioned question are as under :

4. The Appellant-plaintiff filed a suit for declaration that he is having 1/4th share in the property bearing Survey No.504/3 situated at village Padali, Taluka Shirala while he is having half share in each of the lands bearing Survey No.504/4 and 504/5 and prayed for perpetual injunction and in the alternative prayed for possession of the suit land. According to the plaintiff the suit land was initially owned by Babaji and his 2 sons namely Krishna and Vithu. The plaintiff is the grand son of Krishna while defendant no.1 Hambirao is son of Vithu. It is the plaintiff's case that partition had taken place long back between Krishna and Vithu and the lands bearing Survey NO.504/4 and 504/5 to the extent of half share were allotted to Krishna and Vithu. However, thereafter Vithu sold his share in the land to Lakhu and accordingly mutation entry No.3474 was also carried out. Thereafter on 9-9-1940 Krishna again sold the said property to Vithu and M.E.No.3914 was made. However, in the year 1968 taking undue advantage of the fact that land bearing 504/5 and 504/4 were standing in the name of the defendant no.1, the defendant no.2 mortgaged the said property to the Maharashtra State Cooperative Lands Development Bank i.e. defendant no.2. When the plaintiff came to know

about the same he filed an application for entering his name and cancellation of earlier mutation entry NO.3914. It appears that the said matter was taken up right PTO the Collector, Sanely. However, entry NO.6629 was confirmed. Defendant no.1 filed ARTS No.44/1978 and the order passed by the Collector was set aside. Thus according to the plaintiff he was having 1/4th share in the land bearing Survey NO.504/3 and was full owner of the land bearing Survey NO.504/4. He, therefore, filed suit for declaration as mentioned above.

5. The defendant no.1 filed his written statement and opposed the suit claim and denied all the allegations of the plaintiff. He contended that right from the year 1937 he is owner of the suit land and lands bearing 504/4 and 504/5 are owned by him. He also denied plaintiff's claim in regard to exchange of the land and therefore prayed for dismissal of the suit.

6. The defendant no.2 filed its written statement and practically supported the case of defendant no.1. On these pleadings the learned trial Judge framed issues at Exe.28. After considering the evidence adduced by both the parties the learned trial Judge came to the conclusion that the plaintiff has failed to prove his title to the suit land. Not only that but he held that plaintiff has also failed to prove that he was in possession of the suit land as alleged. The learned

trial Judge also held that suit is in fact not in time. Hence on all these grounds the learned trial Judge dismissed the suit.

7. Being aggrieved by the said order, the plaintiff filed First appeal. however, the same also came to be dismissed. Hence the present second appeal and the above mentioned substantial question of law is framed in the same.

8. From perusal of the judgment of the trial Court as well as the first appellate court it is very clear that both the courts below have considered all the evidence adduced by the parties in its proper perspective and have rightly held that plaintiff has in fact failed to prove his title to the suit land. Though the plaintiff had made a case about exchange of land, he failed to adduce any evidence in that behalf. The same is the case in respect of the allegations that suit land was in his possession. On the contrary, the first appellate court relying on revenue record produced by defendant has categorically observed that defendant no.1 was in possession of the suit land right from the year 1937 and for a period of about 30 years nobody objected for his possession as well as the revenue record which was also standing in his name. The finding recorded by the courts below cannot be said to be erroneous or against the evidence on record. When such is the position it cannot be

said that there is any substantial question of law involved in the matter. If at all the substantial question of law is as to whether the courts below have properly appreciated the evidence then it must be said that there is nothing on record to indicate that findings recorded by the courts below are perverse. When such is the position, there is no scope for allowing this second appeal under Section 100 of C.P.C.

9. In view of the above there is no necessity to interfere with the finding recorded by the first appellate court. Hence the appeal is dismissed with costs.

(S.R.SWATHE,J.)